

OVERVIEW OF PAY SYSTEM

§ 9901.311 Major features.

Through the issuance of implementing issuances, the Secretary will further define a pay system that governs the setting and adjusting of covered employees' rates of base salary and adjusted salary and the setting of covered employees' rates of premium pay. The NSPS pay system will include the following features:

(a) A structure of rate ranges linked to various pay bands for each career group, in alignment with the classification structure described in subpart B of this part;

(b) Policies regarding the setting and adjusting of band rate ranges based on mission requirements, labor market conditions, and other factors, as described in §§ 9901.321 and 9901.322;

(c) Policies regarding the setting and adjusting of local market supplements as described in §§ 9901.331 through 9901.333;

(d) Policies regarding employees' eligibility for general salary increases and adjustments in local market supplements, as described in §§ 9901.323 and 9901.334;

(e) Policies regarding performance-based pay, as described in §§ 9901.341 through 9901.345;

(f) Policies on base salary administration, including movement between career groups, positions, pay schedules, and pay bands, as described in §§ 9901.351 through 9901.356;

(g) Linkages to employees' ratings of record, as described in subpart D of this part; and

(h) Policies regarding the setting of and limitations on premium payments, as described in §§ 9901.361 through 9901.364.

§ 9901.312 Maximum rates of base salary and adjusted salary.

(a) Subject to § 9901.105, the Secretary may establish a limitation on the maximum rate of base salary provided under authority of this subpart.

(b) No employee may receive, under authority of this subpart, an adjusted salary rate greater than the rate for level IV of the Executive Schedule plus 5 percent. The payable local market supplement for an employee must be

reduced as necessary to comply with this limitation.

(c) Paragraphs (a) and (b) of this section do not apply to physicians and dentists (in occupational series 0602 and 0680, respectively).

(d) Subject to § 9901.105, the Secretary may establish a higher adjusted salary rate limitation for a specified category of positions in lieu of the limitation in paragraph (b) of this section based on mission requirements, labor market conditions, availability of funds, and any other relevant factors.

§ 9901.313 Aggregate compensation limitations.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, no additional payment (premium pay, allowance, differential, bonus, award, or other similar cash payment) may be paid to an employee in a calendar year if, or to the extent that, when added to the adjusted salary paid to the employee for service performed as an employee in the Department or in another Federal agency, the payment would cause the total aggregate compensation to exceed the annual rate for Executive Level I as in effect on the last day of that calendar year.

(2) In the case of physicians and dentists (in occupational series 0602 and 0680, respectively) payment to the employee may not cause aggregate compensation received in a calendar year to exceed the salary of the President of the United States as in effect on the last day of that calendar year.

(3) Subject to § 9901.105, the Secretary may provide for a higher aggregate compensation limitation equal to the annual rate payable to the Vice President under 3 U.S.C. 104 as in effect on the last day of the calendar year in the case of specified categories of employees for whom a waiver has been authorized under § 9901.362(a)(2).

(4) The limitation described in this paragraph (a) applies to the total amount of aggregate compensation actually received by an employee during the calendar year without regard to the period of service for which such compensation is earned.

(b) *Types of compensation.* For the purpose of this section, aggregate compensation is the total of—

(1) Adjusted salary received as an employee of the Department;

(2) Premium pay under 5 U.S.C. chapter 55, subchapter V, and this subpart;

(3) Incentive awards and performance-based cash awards under 5 U.S.C. 4501–4523 and this part;

(4) Recruitment and relocation incentives under 5 U.S.C. 5753;

(5) Retention incentives under 5 U.S.C. 5754;

(6) Supervisory differentials under 5 U.S.C. 5755;

(7) Post differentials under 5 U.S.C. 5925;

(8) Danger pay allowances under 5 U.S.C. 5928;

(9) Extended assignment incentives under 5 U.S.C. 5757;

(10) Post differentials based on environmental conditions for employees stationed outside the continental United States or in Alaska under 5 U.S.C. 5941(a)(2);

(11) Foreign language proficiency pay under 10 U.S.C. 1596 and 1596a;

(12) Continuation of pay under 5 U.S.C. 8118;

(13) Other similar payments authorized under title 5, United States Code, excluding—

(i) Back pay due to an unjustified personnel action under 5 U.S.C. 5596 (but only if the back payments were originally payable in a previous calendar year);

(ii) Overtime pay under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201–219 and 5 CFR part 551);

(iii) Severance pay under 5 U.S.C. 5595;

(iv) Nonforeign area cost-of-living allowances under 5 U.S.C. 5941(a)(1); and

(v) Lump-sum payments for accumulated and accrued annual leave on separation under 5 U.S.C. 5551 or 5552; and

(14) Payments received from another agency during the calendar year, prior to employment with the Department, that are subject to 5 U.S.C. 5307.

(c) *Administration of aggregate limitation.* (1) At the time a payment covered by paragraph (b) of this section (other than adjusted salary) is authorized for an employee, the employee may not receive any portion of such payment that, when added to the estimated aggregate compensation the employee is

projected to receive, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the limitation applicable to the employee under this section at the end of the calendar year.

(2) Payments that are creditable for retirement purposes (e.g., law enforcement availability pay (LEAP) or standby premium pay) and that are paid to an employee at a regular fixed rate each pay period may not be deferred or discontinued for any period of time in order to make another payment that would otherwise cause an employee's pay to exceed any limitation described in or established by this section.

(3) Except for physicians and dentists (in occupational series 0602 and 0680, respectively), if the estimated aggregate compensation to which an employee is entitled exceeds the applicable limitation under this section for the calendar year, the Department must defer all authorized payments (other than adjusted salary) at the time when otherwise continuing such payments would cause the aggregate compensation actually received by any employee during the calendar year to exceed the applicable limitation. Any portion of a payment deferred under this paragraph will become available for payment as provided in paragraph (d) of this section. For physicians and dentists (in occupational series 0602 and 0680, respectively), payments that exceed the limitation under paragraph (a)(2) of this section may not be made at any time.

(4) If the Department makes an incorrect estimate of aggregate compensation at an earlier date in the calendar year, the sum of an employee's remaining payments of adjusted salary (which may not be deferred) may exceed the difference between the aggregate compensation the employee has actually received to date in that calendar year and the applicable limitation under this section. In this case, the employee will become indebted to the Department for any amount paid in excess of the aggregate limitation. To the extent that the excess amount is attributable to amounts that should have been deferred and would have been payable at the beginning of the next calendar year, the debt must be

nullified on January 1 of the next calendar year. As part of the correction of the error, the excess amount will be deemed to have been paid on January 1 of the next calendar year (when the debt was extinguished) as if it were a deferred excess payment as described in paragraph (c)(3) of this section and must be considered part of the employee's aggregate compensation for the new calendar year.

(d) *Payment of excess amounts.* (1) Except for physicians and dentists (in occupational series 0602 and 0680, respectively), any amount that is not paid to an employee because of the annual aggregate compensation limitation under this section must be paid in a lump-sum payment at the beginning of the following calendar year. Any amount paid the following calendar year will be taken into account for purposes of applying the limitations with respect to such calendar year. For physicians and dentists (in occupational series 0602 and 0680, respectively), payments that exceed the limitation under paragraph (a)(2) of this section may not be made at any time.

(2) If a lump-sum payment causes an employee's estimated aggregate compensation to exceed the applicable limitation under this section, the Department must consider only the employee's adjusted salary and payments that are creditable for retirement purposes (e.g., LEAP or standby pay) in determining the extent to which the lump-sum payment may be paid and will defer all other payments, in order to pay as much of the excess amount as possible. Any payments deferred under this paragraph, including any portion of the excess amount that was not payable, will become payable at the beginning of the next calendar year.

(3) If an employee moves to another Federal agency or to another position within the Department not covered by NSPS, and, at the time of the move, the employee has received payments in excess of the aggregate limitation under 5 U.S.C. 5307, the employee's indebtedness for the excess amount received will be deferred from the effective date of the transfer until the beginning of the next calendar year. Effective January 1 of the new calendar year, the debt will be nullified and the

excess amount will be considered in applying that year's aggregate limitation.

(4) If an employee transfers to another agency and, at the time of transfer, the employee has excess payments deferred to the next calendar year, the provisions of 5 U.S.C. 5307 are applicable.

(5) The following conditions permit payment of excess aggregate compensation without regard to the calendar year limitation:

(i) If an employee dies, the excess amount is payable immediately as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.

(ii) If an employee separates from Federal service, the entire excess amount is payable following a 30-day break in service. If the individual is re-employed in the Department under NSPS in the same calendar year as separation, any previous payment of an excess amount will be considered part of that year's aggregate compensation for the purpose of applying the limitations described in this section for the remainder of the calendar year.

§9901.314 National security compensation comparability.

(a) To the maximum extent practicable, for fiscal years 2004 through 2012, the overall amount allocated for compensation of the DoD civilian employees who are included in the NSPS may not be less than the amount that would have been allocated for compensation of such employees for such fiscal years if they had not been converted to the NSPS, based on, at a minimum—

(1) The number and mix of employees in such organizational or functional units prior to conversion of such employees to the NSPS; and

(2) Adjustments for normal step increases and rates of promotion that would have been expected, had such employees remained in their previous pay schedule.

(b) To the maximum extent practicable, implementing issuances will provide a formula for calculating the overall amount to be allocated for fiscal years beyond fiscal year 2012 for compensation of the civilian employees included in the NSPS. The formula will